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IN THE HIGH COURT OF JUDICATURE AT BILASPUR(CHHATTISGARH)

APPEAL UNDER SECTION 374(2)CR.P.C.

Criminal Appeal No. 173 /2001

APPELLANT
(In Jail).

Rohit Yadao aged 19 years
son of Firit Yadao resident
of village Kadar P.S.
Chakarbhata Tahsil and
Distt.Bilaspur (Chhattisgarh)

VERSUS

RESPONDENT

State of Chhattisgarh
Through: P.S.Chakarbhata
Distt.Bilaspur.

Conviction	Sentence
U/s 302 I.P.C.	Imprisonment for life with fine of Rs.1,000/- In default, R.I. for one year.
U/s 201 I.P.C.	R.I. for seven years with fine of Rs.1,000/-. In default, R.I. for one year.

SENTENCES TO RUN CONCURRENTLY.

FIRST APPEAL BEFORE THIS HON'BLE COURT.

(7/10)
Filed on 13-2-2001
by Shri Kul Sadhwani Advocate
R. 40 AR

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CLERK TO A.G. BILASPUR

(39)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 173/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

21.11.2006

Mrs. Hamida Siddique, Advocate for the appellant.

Mr.U.N.S. Deo, Additional Public Prosecutor & Mr. Akhil Mishra, Panel Lawyer for the State.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J.

By this appeal under Section 374 (2) of the Cr.P.C. accused/appellant Rohit Yadav has questioned the legality & correctness of the judgment of conviction and order of sentence dated 13.12.2000 passed by 6th Additional Sessions Judge, Bilaspur in S.T.No.209/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 & 201 of the IPC sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for 1 year & R.I. for 7 years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for 1 year respectively. However, co-accused Sonwa Yadav has been acquitted of the charge under Section 201 of IPC.

The prosecution case, in brief, is that on 29.4.2000 at about 3.00 p.m. Santram, father of deceased Kishan Kumar lodged a missing report No.6/2000 in the Police Station Chakarbhata to the effect that on 28.4.2000 at about 8.00 a.m. he left for Bilaspur leaving behind his family

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .Cr.A.No..173/01.. **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	members and missing son Kishan Kumar. When he returned from Bilaspur at about 6.00 p.m. on the same day, he came to know through his family members that since 12.00 noon his son Kishan Kumar, aged about 4½ years was missing, who was wearing a black-yellow colour sandow baniyan, blue colour underwear and nylon sleepers and there was a locket in his neck. Kishan Kumar left the house with Dhaniram and thereafter Kishan went to the tank along with son of Dhaniram namely Gangaram, where Gangaram started taking bath, whereas, Kishan was standing on the bank of the tank. Thereafter, Kishan has not returned to the house. Even a search was made, but whereabouts of Kishan could not be traced out. Thereafter, during the investigation on 3.5.2000 accused Rohit gave memorandum (Ex.P-2) regarding the place where he had concealed the body of Kishan in a plastic bag and in pursuance of that the dead body of Kishan was recovered from the agricultural field of Chottelal Kaushik in a standing paddy crop. After giving notice (Ex.P-3) inquest (Ex.P-4) of the dead body of Kishan Kumar was prepared. Dehati Nalishi (Ex.P-9) was given by the Assistant Sub Inspector Shri B.S. Pulasth (PW-11), based on that FIR (Ex.P-8) was registered on 4.5.2000 by the same officer i.e. Shri B.S. Pulasth (PW-11). Site Plan (Ex.P-1) was prepared by the Patwari (PW-6) of the tank where Kishan was standing and Gangaram was taking bath. Site Plan (Ex.P-10) of the place from where dead body of Kishan was recovered was prepared by the Investigating Officer (PW-11). Clothes and locket found on the body of Kishan were taken into possession under Ex.P-9. Dead body of Kishan was sent for postmortem examination to Primary Health	

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	Centre, Chakarbhata from where body was sent to Medical College, Raipur where Dr. Sanjay Kumar Dadu (PW-13) conducted the postmortem, prepared the postmortem report (Ex.P-12) and opined that body was in a stage of advanced decomposition and is in partial adipocere & partial skeletonised remains form. The doctor noticed that finding regarding neck region is suggestive of cause of death as asphyxia as a result of strangulation and the same is homicidal in nature. After completion of usual investigation, charge sheet was filed against the present accused/appellant and co-accused Sonwa Yadav in the Court of Judicial Magistrate First Class, Bilaspur, who in turn committed the case to learned Sessions Judge, Bilaspur from where the Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused persons examined 13 witnesses. Learned Additional Sessions Judge recorded the statement of accused persons under Section 313 of the Cr.P.C. Accused/appellant herein in reply to the questions stated that either he is not aware about the circumstances appearing in the evidence or it is incorrect. He has further stated that the witnesses have deposed against him in order to implicate him in a false case. He is innocent and has been falsely implicated in the crime in question. Similar was the reply of co-accused Sonwa Yadav. After hearing learned counsel for the parties, learned Additional Sessions Judge acquitted co-accused Sonwa Yadav from the charge of	

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आदेश पत्रक (पूर्वानुबद्ध)

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Section 201 of IPC, but convicted and sentenced the accused/appellant in the manner as mentioned above in Para 1 of this judgment.

We have heard Mrs. Hamida Siddique, Adv. for the accused/appellant and Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State and perused the record.

Learned counsel for the accused/appellant argued that the conviction has been based on the finding of trial court to the effect that as the accused has stated in his statement under Section 313 of Cr.P.C. that he has been falsely implicated in the crime, therefore, the motive is established and also that dead body of Kishan Kumar was recovered at the instance of accused based on the information given by him under Section 27 of the Indian Evidence Act. Whereas, the prosecution has utterly failed to establish that the dead body was recovered based on the information given by the accused.

On the other hand, learned counsel for the State Government supported the judgment of the trial court.

In the present case, there is no direct & ocular evidence connecting the accused/appellant with the crime in question and the whole case rests on the circumstantial evidence. In order to base the conviction based on the circumstantial evidence, as per principle laid down by the Hon'ble Apex Court in the matter **Dhananjoy Chatterjee Vs State of W.B.** reported in **(1994) 2 SCC 220**, the prosecution is required to establish that;

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to

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be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

The prosecution has tried to establish the charge against the accused/appellant based on the following circumstances;

1. That, the deceased was last seen alive with the accused just before the death.
2. That, there was motive for commission of crime, as the father of accused and father of deceased were on inimical relations.
3. That, the dead body of Kishan Kumar was recovered at the instance of the accused pursuant to the information given by the accused under Section 27 of the Indian Evidence Act.

First Circumstance:

As far as the first circumstance is concerned, the trial court has disbelieved this circumstance and we are of the considered opinion that the trial court was right in disbelieving the above circumstance, for the reason that father of deceased namely Santram (PW-1) lodged the missing report on 29.4.2000 in which there is no mention that accused and

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	deceased left together for the purpose of eating Mango. PW-1 Santram in Para-2 of his statement has stated that his family members informed him that Kishan alongwith Dhaniram (PW-2) went to the shop situated behind his house and thereafter he was playing with the son of Dhaniram namely Gangaram near the tank. On enquiry, Gangaram informed that Kishan has went along with Rohit towards Chua drain for eating Mango, thereafter they went in search of Kishan. On Wednesday, they came to know that Kishan has been murdered, thereafter a report was lodged in the Police Station. PW-2 Dhaniram, uncle of deceased, has also stated that accused took Kishan with him from the bank of tank for eating mango and when Buhra Bai asked about the whereabouts of Kishan, he informed that Rohit has taken Kishan with him and thereafter Kishan has not returned. At about 1.30-2.00 p.m. the accused came near to his pushcart and asked him that why he is taking his name and started pressing neck of his daughter-in-law, then he intervened. PW-3 Bahura Bai has also given the evidence to that effect. PW-4 Basant has also given the evidence to that effect. PW-5 Gangaram, with whom Kishan went to the tank, has also given the evidence that accused took Kishan with him for eating mango, but why this fact has not been mentioned by Santram (PW-1) in the missing report (Ex.P-11C) has not been explained. When every member of the family of Kishan was aware of the fact that the accused took Kishan along with him for the purpose of eating mango and thereafter, when Rohit did not return even then the name of Rohit was not mentioned in missing report Ex.P-11C. When accused Rohit came to know that family members of deceased are	

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taking his name, he quarreled with the daughter-in-law of Dhaniram (PW-2), even then this fact was not mentioned in the missing report. Therefore, the last seen theory has rightly been disbelieved by the trial court.

Second circumstance

As far as the motive is concerned, there is no iota of evidence adduced by the prosecution that the father of accused and father of deceased were having inimical relations and on account of that the accused took Kishan along with him and committed his murder. The trial Court in Para 28 of the judgment has mentioned that since accused Rohit has stated in his statement that he has been falsely implicated by the witnesses in the crime on account of animosity, therefore, there was motive behind the crime. But this finding of the trial court cannot be held to be based on any admissible legal evidence. In order to establish the motive behind the crime the prosecution was required to adduce evidence and merely because the accused in his statement under Section 313 Cr.P.C. replied to the question 'as to why the witnesses have deposed against him' has stated that on account of animosity they have stated against him, mere this fact cannot be taken to be a sufficient circumstance for establishing the motive of accused for commission of crime in question. Therefore, the finding of the trial court regarding the motive cannot be sustained, as the same is not based on any legal admissible evidence.

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Third Circumstance

As far as the recovery of dead body of Kishan at the instance of accused/appellant is concerned, the Investigating Officer (PW-11) Shri B.S. Pulasth has stated in his statement that while in the police custody the accused gave memorandum that he has concealed the dead body of Kishan in the agricultural field of Chottelal Kaushik and based on that Ex.P-2 was reduced in writing, which bears his signature at 'B to B' place and at the instance of the accused dead body was recovered from the agricultural field of Chotelal Kaushik situated in the area of Village Hardikona. The place from where the dead body was recovered, the summer paddy crop was standing. Only one witness of memorandum Ex.P-2 namely Jaleshwar (PW-8) has been produced and other witness namely Prakash Chand has not been examined by the prosecution. In the examination-in-chief PW-8 Jaleshwar has stated that on enquiry by police the accused disclosed that body of Kishan is kept in the plot of Village Hardikona and Chua Nala was disclosed as the place of occurrence. Thereafter, the body was recovered from the plot in the territory of Village Hardikona over which the paddy crop was standing. To whom that plot was belonging he does not know. In the cross-examination, he has stated that in his presence the accused did not narrate anything about the incident and after recovery of dead body he signed the papers.

The above evidence of Jaleshwar (PW-8) in the cross-examination demolishes the case of prosecution that the accused gave memorandum

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(Ex.P-2) in his presence regarding the place where he concealed the body of Kishan.

Now coming to the evidence of PW-11 Shri B.S. Pulasth, Investigating Officer, who has stated that accused gave information that the body of Kishan has been concealed in the agricultural field of Chottelal Kaushik, whereas, perusal of memorandum Ex.P-2 shows that it was informed by the accused that the body was kept by the accused in a paddy field situated in the territory of Village Hardikona after putting the same in a plastic bag. Therefore, in the memorandum Ex.P-2 it has not been mentioned, as has been stated by the Investigating Officer (PW-11), that accused gave information that the dead body has been concealed in the agricultural field of Chottelal Kaushik. In order to prove the memorandum the Investigating Officer was required to state the actual words, which were disclosed by the accused, whereas, the evidence of Investigating Officer Shri B.S. Pulasth (PW-11) is contrary to the memorandum Ex.P-2.

As far as the discovery of facts pursuant to the information given by the accused is concerned, no report regarding the discovery of place from where the dead body was recovered has been prepared by the Investigating Officer. Only the inquest report (Ex.P-4) of the body was prepared and in that inquest report, it has nowhere been mentioned that body was recovered from the place as disclosed by the accused.

From the above facts emerging in the evidence on record, the prosecution has utterly failed to establish that by memorandum (Ex.P-2) accused exhibited the knowledge or the mental awareness as to its

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existence at a particular place and therefore, it cannot be said that as per evidence of the prosecution the accused had the knowledge about the place from which object was produced. As such, for the foregoing reasons, the prosecution has failed to establish that the accused have the knowledge about the place from where dead body of Kishan was recovered and same was informed by him. Therefore, the finding of the trial court on this point is not based on any legal clinching evidence and therefore, same cannot be sustained.

In view of the above, the prosecution has not been able to connect the accused with the crime in question by adducing any legal clinching evidence. By the circumstances pressed into service by the prosecution, the prosecution has not been able to establish that the accused was the author of the crime in question or from the circumstances, only irresistible conclusion can be drawn that the accused was the author of crime in question.

In the result, the appeal of the appellant succeeds, conviction and sentence imposed on the appellant for commission of offence under Sections 302 & 201 of IPC are set aside and he is acquitted of the above charges. He be set at liberty forthwith, if not required in any other case.

Certified copy as per rules.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

Roshan/-

P.T.O.